

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

REDENTOR GALANG,

No. C 06-3546 MHP (pr)

Petitioner,

**ORDER DENYING HABEAS  
PETITION**

v.

A. P. KANE, warden,

Respondent.

**INTRODUCTION**

Redentor Galang, an inmate at the Correctional Training Facility in Soledad, filed this pro se action seeking a writ of habeas corpus under 28 U.S.C. § 2254. This matter is now before the court for consideration of the merits of the habeas petition. For the reasons discussed below, the petition will be denied.

**BACKGROUND**

Galang was convicted in Los Angeles County Superior Court of conspiracy to commit second degree murder with a firearm enhancement. His conviction was pursuant to a plea agreement. On September 24, 1985, he was sentenced to a total of 16 years to life in prison. His habeas petition does not challenge his conviction but instead challenges a July 28, 2004 decision of the Board of Prison Terms, now known as the Board of Parole Hearings ("BPH"), that found him not suitable for parole. The hearing was his ninth parole hearing, and was conducted at a time when he was 20 years into his 16-to-life sentence.

The BPH identified the circumstances of the commitment offense, Galang's prison misbehavior, his unfavorable psychological report, and his need for further participation in self-help programming as the reasons for its decision that his release would pose an

1 unreasonable risk of danger to society or threat to public safety. The BPH also relied on the  
2 opposition to parole by the district attorney's office.

3 Galang sought relief in the California courts. The Monterey County Superior Court  
4 denied his petition for writ of habeas corpus in a reasoned decision. The California Supreme  
5 Court summarily denied his petition for writ of habeas corpus.

6 Galang then filed his federal petition for a writ of habeas corpus. The court found  
7 cognizable his claims that (1) his right to due process was violated because the evidence was  
8 insufficient to support the BPH's decision that he was unsuitable for parole and (2) the BPH  
9 was a biased decision-maker in violation of his right to due process. Respondent filed an  
10 answer and Galang filed a traverse. A third, unexhausted, claim that he raised in his traverse  
11 was later dismissed voluntarily.

12 The court had intended to wait for guidance from the anticipated en banc decision in  
13 Hayward v. Marshall, 512 F.3d 536 (9th Cir.), reh'g en banc granted, 527 F.3d 797 (9th Cir.  
14 2008). Although much time has passed, Hayward remains pending in the appellate court and  
15 it is unknown to this court when the decision will be released. The court will proceed to  
16 decide the merits of the petition without the benefit of the Hayward decision.

### 17 JURISDICTION AND VENUE

18 This court has subject matter jurisdiction over this habeas action for relief under 28  
19 U.S.C. § 2254. 28 U.S.C. § 1331. This action is in the proper venue because the challenged  
20 action concerns the execution of the sentence of a prisoner housed at a prison in Monterey  
21 County, within this judicial district. 28 U.S.C. §§ 84, 2241(d).

### 22 EXHAUSTION

23 Prisoners in state custody who wish to challenge collaterally in federal habeas  
24 proceedings either the fact or length of their confinement are required first to exhaust state  
25 judicial remedies, either on direct appeal or through collateral proceedings, by presenting the  
26 highest state court available with a fair opportunity to rule on the merits of each and every  
27 claim they seek to raise in federal court. See 28 U.S.C. § 2254(b), (c). The parties do not  
28 dispute that state court remedies were exhausted for the claims remaining for adjudication.

## STANDARD OF REVIEW

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). The petition may not be granted with respect to any claim that was adjudicated on the merits in state court unless the state court's adjudication of the claim: "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d); see Williams (Terry) v. Taylor, 529 U.S. 362, 409-13 (2000). Section 2254(d) applies to a habeas petition from a state prisoner challenging the denial of parole. See Sass v. California Board of Prison Terms, 461 F.3d 1123, 1126-27 (9th Cir. 2006).

## DISCUSSION

### A. Due Process Requires That Some Evidence Support a Parole Denial

A California prisoner with a sentence of a term of years to life with the possibility of parole has a protected liberty interest in release on parole and therefore a right to due process in the parole suitability proceedings. See Sass, 461 F.3d at 1127-28; Board of Pardons v. Allen, 482 U.S. 369 (1987); Greenholtz v. Inmates of Nebraska Penal & Corr. Complex, 442 U.S. 1 (1979); Cal. Penal Code § 3041(b).

A parole board's decision satisfies the requirements of due process if "some evidence" supports the decision. Sass, 461 F.3d at 1128-29 (adopting some evidence standard for disciplinary hearings outlined in Superintendent v. Hill, 472 U.S. 445, 454-55 (1985)). "To determine whether the some evidence standard is met 'does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached'" by the BPH. Sass, 461 F.3d at 1128 (quoting Superintendent v. Hill, 472 U.S. at 455-56). The "some evidence standard is minimal, and

1 assures that 'the record is not so devoid of evidence that the findings of the . . . board were  
 2 without support or otherwise arbitrary.'" Id. at 1129 (quoting Superintendent v. Hill, 472  
 3 U.S. at 457). The some evidence standard of Superintendent v. Hill is clearly established law  
 4 in the parole context for purposes of § 2254(d). Sass, 461 F.3d at 1129. As a matter of state  
 5 law, the parole authority's decision must also satisfy the "some evidence" standard of review.  
 6 See In re Lawrence, 44 Cal. 4th 1181, 1191 (Cal. 2008) (state court "standard of review  
 7 properly is characterized as whether 'some evidence' supports the conclusion that the inmate  
 8 is unsuitable for parole because he or she currently is dangerous").

9 Having determined that there is a due process right, and that some evidence is the  
 10 evidentiary standard for judicial review, the next step is to look to state law because that sets  
 11 the criteria to which the some evidence standard applies. One must look to state law to  
 12 answer the question, "'some evidence' of what?"

#### 13 B. State Law Standards For Parole For Life Prisoners In California

14 California uses indeterminate sentences for those convicted of most non-capital  
 15 murders and conspiracy to commit such murders, with the term being life imprisonment and  
 16 parole eligibility after a certain minimum number of years. A first degree murder conviction  
 17 yields a minimum term of 25 years to life and a second degree murder conviction yields a  
 18 minimum term of 15 years to life imprisonment. See In re Dannenberg, 34 Cal. 4th 1061,  
 19 1078 (Cal. 2005); Cal. Penal Code § 190. Assuming the crime exists, see RT 53-54,  
 20 conspiracy to commit second degree murder therefore results in the same sentence as second  
 21 degree murder. See Cal. Penal Code § 182 ("When they conspire to commit any other  
 22 felony, they shall be punishable in the same manner and to the same extent as is provided for  
 23 the punishment of that felony.") California's parole scheme described below provides that a  
 24 release date normally must be set for a indeterminate life prisoner unless various factors  
 25 exist, but the "unless" qualifier is substantial.

26 A BPH panel meets with an inmate one year before the prisoner's minimum eligible  
 27 release date "and shall normally set a parole release date. . . . The release date shall be set in a  
 28 manner that will provide uniform terms for offenses of similar gravity and magnitude in

1 respect to their threat to the public, and that will comply with the sentencing rules that the  
2 Judicial Council may issue and any sentencing information relevant to the setting of parole  
3 release dates." Cal. Penal Code § 3041(a). Significantly, that statute also provides that the  
4 panel "shall set a release date unless it determines that the gravity of the current convicted  
5 offense or offenses, or the timing and gravity of current or past convicted offense or offenses,  
6 is such that consideration of the public safety requires a more lengthy period of incarceration  
7 for this individual, and that a parole date, therefore, cannot be fixed at this meeting." Cal.  
8 Penal Code § 3041(b).

9 The parties base their arguments on the regulations for parole consideration of  
10 prisoners convicted of murder, 15 Cal. Code Regs. § 2400 et seq. Galang was not, however,  
11 convicted of murder and those regulations may not be the appropriate regulations. Instead,  
12 his case appears to be covered by the regulations at 15 Cal. Code Regs. § 2280 et seq. which  
13 apply to non-murdering life prisoners. The difference between the two sets of regulations is  
14 insubstantial. See 15 Cal. Code Regs. § 2400 (last paragraph).

15 One of the implementing regulations, 15 Cal. Code Regs. § 2281, allows for  
16 consideration of a wide range of information in determining suitability, see § 2281(b), and  
17 lists circumstances tending to show suitability and circumstances tending to show  
18 unsuitability, § 2281(c) and (d).<sup>1</sup> The regulation also provides that "[t]he panel shall first  
19 determine whether a prisoner is suitable for release on parole. Regardless of the length of  
20 time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment  
21 of the panel the prisoner will pose an unreasonable risk of danger to society if released from  
22 prison." 15 Cal. Code Regs. § 2281(a). The regulations contain a matrix of suggested base  
23 terms for several categories of crimes. See 15 Cal. Code Regs. § 2282. The statutory  
24 scheme places individual suitability for parole above a prisoner's expectancy in early setting  
25 of a fixed date designed to ensure term uniformity. Dannenberg, 34 Cal. 4th at 1070-71.  
26 Under state law, the matrix is not reached unless and until the prisoner is found suitable for  
27 parole. Id. at 1070-71.

1 The "Penal Code and corresponding regulations establish that the fundamental  
2 consideration in parole decisions is public safety . . . [T]he core determination of 'public  
3 safety' under the statute and corresponding regulations involves an assessment of an inmate's  
4 current dangerousness." Lawrence, 44 Cal. 4th at 1205 (emphasis in source).<sup>2</sup>

5 A critical issue in parole denial cases concerns the parole authority's use of evidence  
6 about the criminal offense that led to the conviction. Three Ninth Circuit cases provide the  
7 guideposts for applying the Superintendent v. Hill some evidence standard on this point:  
8 Biggs v. Terhune, 334 F.3d 910 (9th Cir. 2003), Sass, 461 F.3d 1123, and Irons v. Carey, 505  
9 F.3d 846 (9th Cir. 2007).<sup>3</sup> Biggs explained that the value of the criminal offense fades over  
10 time as a predictor of parole suitability: "The Parole Board's decision is one of 'equity' and  
11 requires a careful balancing and assessment of the factors considered. . . . A continued  
12 reliance in the future on an unchanging factor, the circumstance of the offense and conduct  
13 prior to imprisonment, runs contrary to the rehabilitative goals espoused by the prison system  
14 and could result in a due process violation." Biggs, 334 F.3d at 916-17. Biggs upheld the  
15 initial denial of a parole release date based solely on the nature of the crime and the  
16 prisoner's conduct before incarceration, but cautioned that "[o]ver time . . . , should Biggs  
17 continue to demonstrate exemplary behavior and evidence of rehabilitation, denying him a  
18 parole date simply because of the nature of Biggs' offense and prior conduct would raise  
19 serious questions involving his liberty interest in parole." Id. at 916. Next came Sass, which  
20 criticized the Biggs statements as improper and beyond the scope of the dispute before the  
21 court: "Under AEDPA it is not our function to speculate about how future parole hearings  
22 could proceed." Sass, 461 F.3d at 1129. Sass determined that the parole board is not  
23 precluded from relying on unchanging factors such as the circumstances of the commitment  
24 offense or the petitioner's pre-offense behavior in determining parole suitability. See id.  
25 (commitment offenses in combination with prior offenses provided some evidence to support  
26 denial of parole at subsequent parole consideration hearing). Sass also put to rest any idea  
27 from Biggs that the commitment crime and pre-offense behavior only support the initial  
28 denial of parole. Irons determined that due process was not violated by the use of the

1 commitment offense and pre-offense criminality to deny parole for a prisoner 16 years into  
2 his 17-to-life sentence. Irons emphasized that all three cases (Irons, Sass and Biggs) in  
3 which the court had "held that a parole board's decision to deem a prisoner unsuitable for  
4 parole solely on the basis of his commitment offense comports with due process, the decision  
5 was made before the inmate had served the minimum number of years required by his  
6 sentence." Irons, 505 F.3d at 853. Interpreting this statement from Irons to suggest that the  
7 offense can only be relied on until the minimum number of years has been reached would  
8 suffer the same problem that Sass identified in Biggs: it is not the holding of the case. The  
9 dicta in Biggs and Irons are speculative and do not determine when a denial of parole based  
10 solely upon the commitment offense or pre-offense behavior violates due process. Neither  
11 logic nor Irons compel a decision that such reliance must cease when the prisoner reaches the  
12 minimum number of years in his sentence, such as the fifteenth year of a 15-to-life sentence.

13 The upshot of these three cases is that the BPH can look at immutable events, such as  
14 the nature of the conviction offense and pre-conviction criminality, to predict that the  
15 prisoner is not currently suitable for parole even after the initial denial (Sass), but the weight  
16 to be attributed to those immutable events should decrease over time as a predictor of future  
17 dangerousness as the years pass and the prisoner demonstrates favorable behavior (Biggs and  
18 Irons). Sass did not dispute the principle that, other things being equal, a murder committed  
19 50 years ago is less probative of a prisoner's current dangerousness than one committed 10  
20 years ago. Not only does the passage of time in prison count for something, exemplary  
21 behavior and rehabilitation in prison count for something according to Biggs and Irons.  
22 Superintendent v. Hill's standard might be quite low, but it does require that the decision not  
23 be arbitrary, and reliance on only the facts of the crime might eventually make for an  
24 arbitrary decision.<sup>4</sup>

### 25 C. Some Evidence Supports The BPH's Decision In Galang's Case

#### 26 1. BPH Decision

27 The BPH identified the circumstances of the commitment offense, Galang's prison  
28 misbehavior, his unfavorable psychological report, and his need for further participation in



1 self-help programming as the reasons for its decision that his release would pose an  
 2 unreasonable risk of danger to society or threat to public safety. The BPH also relied on the  
 3 opposition to parole by the district attorney's office. In its decision, the BPH noted that there  
 4 were some good points for Galang, e.g., that he had no other criminal record, that he had  
 5 developed some marketable skills, and that he participated in a self-help program and was in  
 6 the prison fellowship ministry. Nonetheless, the positive aspects of his behavior did not  
 7 outweigh the factors of unsuitability, in the BPH's view.

8 a. Commitment Offense

9 In finding Galang unsuitable, the BPH stated that the commitment offense "was  
 10 carried out in a dispassionate and calculated manner, multiple victims were attacked and  
 11 injured in the same incident. The offense was carried out in a manner which demonstrates a  
 12 callous disregard for human suffering." Resp. Exh. 2, 7/28/04 BPH hearing reporter's  
 13 transcript ("RT") at 60. The motive for the crime was trivial and inexplicable. The  
 14 circumstances of the commitment offense could be considered as tending to indicate  
 15 unsuitability. See 15 Cal. Code Regs. § 2281(c)(1).

16 Galang was involved in an evening of gang retaliation, during the course of which two  
 17 people were killed and two other people were wounded in separate shooting incidents. He  
 18 did not shoot any of the victims, but instead drove one of the two cars that carried the  
 19 shooters to the victims. The BPH relied on the probation officer's report that described the  
 20 criminal episode.

21 In the latter part of December of 1982, there were four separate inter-gang related  
 22 shooting incidents in the Eagle Rock area of Los Angeles. Three persons were killed;  
 23 two more were seriously injured. The primary motive for the initial shooting was a  
 territorial dispute between two rival gang factions, the Satanas, a Filipino gang, and a  
 rival Mexican gang, "the Avenues."

24 The series of crimes that the defendant participated in were triggered by the  
 25 leader of the "Satana" gang member, Edgar Pablo, [being] killed by the "avenues" on  
 26 December 22, 1982 at about 1:30 a.m. Pablo was buried on December 27, 1982. All  
 27 of the defendants charged in this case were present at the funeral and attended a group  
 28 wake. They later discussed retaliation with the "Avenues" for the killing of Pablo.  
 Defendants split up in two groups of four to search out the neighborhood in two cars  
 to avenge the shooting of Pablo, by shooting some of them. Defendant (the driver)  
 went in one car with co-defendants Bayani, Elegre, and Gutierrez. The second group  
 went in Agnir's car with the other co-defendants Guting, the driver, together with  
 Mortel and Sen Luis. All were armed with rifles and handguns. Upon reaching an



1 alley between Langdal and Ridgeway Avenue, the two cars separated, each taking up  
 2 a position at the opposite end of the alley. At the same time, two victims, Francisco  
 3 Gomez, age 22 at the time, and Luis Silva, age 23, were leaving the Gomez residence  
 4 and were entering Silva's station wagon parked in the alley. Following a brief  
 5 distance of pursuit, co-defendants Mortel and Agnir, both armed, approached a car on  
 6 foot, each on one side of the vehicle. Four victims, who were trapped in the car, were  
 7 fired upon at close range. Gomez died in the passenger seat as a result of a gunshot  
 8 wound in the head and Silva was able to get out of the car and was gunned down as he  
 ran and died from four gunshot wounds inflicted by co-defendant Agnir. Both Mortel  
 and Agnir then returned to their car, and then returned to defendant Galang's  
 residence. It is reported that neither of the victims was associated with any gang.  
 Defendant's group, in the other car, was unaware of the double killing and continued  
 looking for the "avenues." They spotted two males at the telephone booth near  
 Avenue 54 and York Boulevard. Both victims were shot upon but they survived.  
 Neither had any gang affiliation.

9 Resp. Exh. 3 at 2-4. About a month later, one of the shooters was arrested and a weapon he  
 10 was carrying was determined to have been used in the criminal episode in which Galang was  
 11 involved. The arrestee spoke to police and implicated his fellow gang members, including  
 12 Galang. Galang was arrested in Oxnard on February 10, 1983. Id. at 4-5

13 b. Prison Misbehavior

14 The BPH rested its decision in part on Galang's prison misbehavior. RT 61. Galang  
 15 had received seven CDC-115 rule violation reports for serious misconduct and four CDC-  
 16 128 counseling memoranda for lesser transgressions. The BPH was most concerned about  
 17 the CDC-115 in 2000 for battery on an inmate and in 1998 for possession of a weapon. RT  
 18 61. With regard to the 2000 battery, "[i]nformation in the confidential file indicates that he  
 19 was identified by two Asian inmates as one of the assailants that attacked him, striking him  
 20 with their fists, because the Asian victims would not join their Asian group." RT 61; see  
 21 Resp. Exh. 5 at 3 (psychological report). Galang denied involvement in the 2000 attack and  
 22 denied being in possession of the weapon found in his cell in 1998. RT 43.

23 Although the BPH focused on just the two most recent serious rule violations, Galang  
 24 had others that indicated continued problems. See Resp. Exhs. 20-26. In December 1986,  
 25 he received a CDC-115 for engaging in a fistfight with his cellmate. In April 1987, he and  
 26 several other inmates received CDC-115s for participating in a work strike and refusing to  
 27 return to work after the lunch break. In April 1988, Galang received a CDC-115 for  
 28 possession of inmate-manufactured alcohol. In August 1990, Galang received a CDC-115

1 for refusing to perform assigned duties. In December 1990, Galang received a CDC-115 for  
2 possession of a red privilege card obtained through fraud and forgery. He was found guilty  
3 on each of these CDC-115s.

4 c. Psychological Evaluation

5 The BPH also relied in part on the psychological evaluation from 2004 that was "not  
6 totally supportive of release." RT 61. The psychological report noted the two recent CDC-  
7 115 disciplinary offenses and stated: "Ordinarily, based on his accomplishments in the  
8 institutional environment, strong community support, and general positive adjustment,  
9 inmate Galang would be rated as having a risk level of below average in comparison to other  
10 inmates. However, in view of the two disciplinaries noted above, the risk level is increased  
11 to average in comparison to other inmates. [¶] Negative peer associates would be a risk factor  
12 in this case, as this factor was related to his commitment offense, as well as his disciplinary  
13 received on 10/02/00." Resp. Exh. 5 at 3.

14 d. Need For Further Self-Help Programming

15 The BPH stated in its decision that Galang needed "to participate in self-help in order  
16 to face, discuss, understand and cope with stress in a nondestructive manner. Until progress  
17 is made the prisoner continues to be unpredictable and a threat to others." RT 62. Although  
18 there was no evidence of an alcohol or substance abuse problem, one commissioner  
19 recommended that Galang "[g]et involved with the NA or AA 12 steps. Although they're  
20 saying that you don't have substance abuse, but it's not just for substance abuse. It also helps  
21 you build character and good judgment by following the steps." RT 63. The other  
22 commissioner indicated that he thought that Galang was "in denial in some areas" based on  
23 Galang's denial of responsibility for the weapon possession that led to the 1998 CDC-115,  
24 denial of involvement in the assault that led to the 2000 CDC-115, and minimization of his  
25 involvement in the gang shootings when he spoke to the psychologist. RT 64. This  
26 commissioner also recommended that Galang consider AA and NA as resources for problem-  
27 solving skills.

1           2.       State Court Decision

2           The Monterey County Superior Court rejected Galang's habeas petition in a reasoned  
3 decision. Resp. Exh. 10. The court noted that the Board found Galang unsuitable because of  
4 the circumstances of the commitment offense, his prison misconduct that included an assault  
5 on two Asian-American inmates for refusing to join an Asian group, and a psychological  
6 report that noted his risk level was average. The court determined that, based on these  
7 findings, it was "satisfied that there is 'some evidence' on the record in support of the Board's  
8 findings." Id. at 2.

9           The court criticized the BPH's recommendation that Galang become involved with  
10 AA or NA in light of the recognition that he does not have a drug or alcohol problem. Id.  
11 The commissioner's suggestion "was well meaning, but it was also inappropriate.  
12 Participation in substance abuse programs such as Alcoholics Anonymous and Narcotics  
13 Anonymous is not an appropriate consideration in parole hearings unless the inmate has a  
14 demonstrable substance abuse problem." Id. Not only was it not appropriate on the facts of  
15 this case, "suggesting that Petitioner join a fellowship of alcoholics or drug addicts to 'build  
16 character and good judgment' does not strike the Court as sound advice, and encouraging  
17 non-addicts to join substance abuse programs does a disservice to individuals within the  
18 programs who are making an honest recovery effort." Id. at 2-3.

19           3.       Analysis Of Federal Claim

20           This court applies § 2254(d) to the Monterey County Superior Court's decision  
21 because it is the last reasoned decision from a state court on Galang's claim. See Ylst v.  
22 Nunnemaker, 501 U.S. 797, 803-04 (1991); Barker v. Fleming, 423 F.3d 1085, 1091-92 (9th  
23 Cir. 2005). The superior court correctly identified the "some evidence" standard as the  
24 applicable standard for judicial review, as evidenced by its citation to In re Rosenkrantz, 29  
25 Cal. 4th 616 (Cal. 2002), which had cited and adopted the Superintendent v. Hill some  
26 evidence standard as the proper standard for judicial review of evidentiary sufficiency for  
27 administrative cases. See Rosenkrantz, 29 Cal. 4th at 665-67. The superior court cited  
28 another state appellate decision for its amplification on the some evidence standard, as it

1 stated that "[i]t is not sufficient that the evidence overwhelmingly contradicts the parole  
2 board's decision. So long as there is 'some evidence' in support of the board's findings, a  
3 court must uphold the decision." Resp. Exh. 10 at 1 (italics added). There is disagreement in  
4 the courts as to whether the italicized statement correctly describes the some evidence  
5 standard, but this court need not decide whether it does because this case does not have those  
6 facts. The court does not today face a case where the evidence overwhelmingly contradicts  
7 the decision of the BPH. Galang's prison misbehavior and unsupportive psychological  
8 evaluation in addition to his commitment offense make this a case where the BPH did not  
9 rely on just the commitment offense and did not have evidence that overwhelmingly  
10 contradicted its decision that Galang was unsuitable.

11 The superior court did not unreasonably apply Superintendent v. Hill in determining  
12 that there was some evidence to support the BPH's decision. Notwithstanding some positive  
13 factors for Galang, the BPH had determined that, 20 years into his 16-to-life sentence,  
14 Galang posed an unreasonable risk of danger to society if released from prison because of the  
15 commitment offense plus his prison misconduct and his unfavorable psychological report.  
16 (Since the state court rejected the recommendation that Galang needed further self-help  
17 programming in AA or NA, this court will follow suit and evaluate the other reasons relied  
18 upon by the BPH to see if the decision has sufficient support.) There is a rational connection  
19 between the evidence relied on and the decision that he is a current threat. Although he was  
20 not the shooter, Galang was an integral part of a deadly episode of gang retaliation: he drove  
21 one of the two cars of armed gang members who went out looking for rival gang members to  
22 attack to avenge the death of one of their own gang members. As sometimes happens,  
23 innocent people unconnected to the gang feud were victimized. Even though Galang claimed  
24 that he didn't expect retaliation to occur that night, his statements at the hearing show that he  
25 knew retaliation against the rival gang was an inevitability (perhaps because he had been in  
26 the gang for several years) and knew that the two men who got out of his car were going to  
27 shoot at two of the victims. See RT 13-14, 37, 39-40, 46 Although the conspiracy to commit  
28 murder was obviously a very large factor in its decision, the BPH did not rely solely on the

1 conspiracy to commit murder and instead properly relied on that crime plus a combination of  
2 several other factors, including multiple episodes of prison misconduct and an unfavorable  
3 psychological report. See 15 Cal. Code Regs. § 2281(b) ("Circumstances which taken alone  
4 may not firmly establish unsuitability for parole may contribute to a pattern which results in a  
5 finding of unsuitability.")

6 The prison misconduct in 2000 is especially troubling as it was relatively recent (i.e.,  
7 less than 4 years before the hearing) and had some markers of gang-like activities. The  
8 CDC-115 stated that, after an investigation, "it has been concluded that an element of  
9 Asian/Pacific Islander inmates have been pressuring and committed battery on other  
10 Asian/Pacific Islander inmates on the "B" Yard, in order to control the Asian/Pacific Islander  
11 inmate population. Based on multiple, confidential sources, Inmate GALANG, D-15354,  
12 WA-204U, has been identified in the battery" on three inmates. Resp. Exh. 26 at 1.  
13 According to confidential information, Galang was identified "as a leader" and one of the  
14 inmates who battered the three inmates. Id. The group may not be a gang, but the organized  
15 efforts to intimidate and control other people are like those of gangs. This kind of activity is  
16 particularly of concern in light of the fact that Galang is in prison because of his activities in  
17 a street gang 20 years earlier. In short, even though it was 20 years since he participated in  
18 the conspiracy to commit murder that left two individuals dead and two more wounded, he  
19 had engaged in further recent misconduct that looked like an orchestrated attack to exert  
20 power over other inmates.

21 Bearing in mind that the court's chore is to consider not whether some evidence  
22 supports the reasons, but whether some evidence supports the conclusion that Galang's  
23 release unreasonably endangers public safety, this court concludes that the Monterey County  
24 Superior Court's rejection of his insufficient evidence claim was not contrary to or an  
25 unreasonable application of the Superintendent v. Hill some evidence standard.

26 D. Biased Decision-Maker Claim

27 Galang asserts in his petition that the BPH had "adopted an anti and/or no parole  
28 policy per se, or a policy of underinclusion demonstrating a policy of systematic bias."

1 Petition, p. 5. Galang offers no evidentiary support for his conclusory allegations. "It is  
2 well-settled that '[c]onclusory allegations which are not supported by a clear statement of  
3 specific facts do not warrant habeas relief." Jones v. Gomez, 66 F.3d 199, 204-05 (9th Cir.  
4 1995). Galang further argues that the low number of paroles granted violated the legislative  
5 intent of California Penal Code § 3041 that a parole date shall normally be set. This  
6 argument has no merit for the reasons discussed in Section B above, which explains that the  
7 inmate must be found suitable before the release date needs to be set. The state statutory  
8 scheme places individual suitability for parole above a prisoner's expectancy in early setting  
9 of a fixed date designed to ensure term uniformity. In re Dannenberg, 34 Cal. 4th at 1070-  
10 71. Galang is not entitled to the writ on this claim.

### 11 CONCLUSION

12 For the foregoing reasons, the petition is denied on the merits. The clerk shall close  
13 the file.

14 IT IS SO ORDERED.

15 DATED: March 26, 2010

  
\_\_\_\_\_  
Marilyn Hall Patel  
United States District Judge

## NOTES

1. The listed circumstances tending to show unsuitability for parole are the nature of the commitment offense, i.e., whether the prisoner committed the offense in "an especially heinous, atrocious or cruel manner;" the prisoner has a previous record of violence; the prisoner has an unstable social history, the prisoner previously engaged in a sadistic sexual offense, the prisoner has a lengthy history of severe mental problems related to the offense; and serious misconduct while in prison. 15 Cal. Code Regs. § 2281(c). The listed circumstances tending to show suitability for parole are the absence of a juvenile record, stable social history, signs of remorse, a stressful motivation for the crime, whether the prisoner suffered from battered woman's syndrome, lack of criminal history, the present age reduces the probability of recidivism, the prisoner has made realistic plans for release or developed marketable skills, and positive institutional behavior. 15 Cal. Code Regs. § 2281(d). The circumstances listed as tending to show unsuitability and suitability "are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel." 15 Cal. Code Regs. § 2281(c) and (d).

2. The California Supreme Court's determination in Lawrence, 44 Cal. 4th 1181, that state law requires the parole authority to determine whether the inmate is unsuitable for parole because he currently is dangerous is binding in this federal habeas action. See Hicks v. Feiock, 485 U.S. 624, 629-30 (1988). However, Lawrence does not govern this court's analysis in every respect. This court is not bound by the discussion in Lawrence (see footnote 4, infra) as to the evaluation of the commitment offense in determining whether the parole applicant currently is dangerous. As to that point, Lawrence is persuasive authority, while the Ninth Circuit's holdings in Sass, Biggs, and Irons are binding authority. Also, Lawrence's determination that "some evidence" is the proper standard of judicial review, 44 Cal. 4th at 1211-12, does not bind this court because it is a state court decision and, in any event, was not determining the standard required by the federal constitution.

3. En banc review is now pending in a fourth case regarding the some evidence standard, Hayward v. Marshall, 512 F.3d 536 (9th Cir.), reh'g en banc granted, 527 F.3d 797 (9th Cir. 2008). The order granting en banc review states that the panel opinion is of no precedential value.

4. The California Supreme Court discussed the use of the commitment crime to deny parole in the companion cases of Lawrence, 44 Cal. 4th 1181, and In re Shaputis, 44 Cal. 4th 1241 (Cal. 2008). The court explained that where "evidence of the inmate's rehabilitation and suitability for parole under the governing statutes and regulations is overwhelming, the only evidence related to unsuitability is the gravity of the commitment offense, and that offense is both temporally remote and mitigated by circumstances indicating the conduct is unlikely to recur, the immutable circumstance that the commitment offense involved aggravated conduct does not provide 'some evidence' inevitably supporting the ultimate decision that the inmate remains a threat to public safety." Lawrence, 44 Cal. 4th at 1191 (emphasis in source). Applying that rule, the court determined that there was not some evidence to deny parole in Lawrence but that there was some evidence to deny parole in Shaputis.